

AMENDED IN SENATE JUNE 19, 2008
AMENDED IN ASSEMBLY APRIL 30, 2008
AMENDED IN ASSEMBLY APRIL 16, 2008
AMENDED IN ASSEMBLY APRIL 3, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 2076

Introduced by Assembly Member Fuentes

February 19, 2008

An act to add Article 2.5 (commencing with Section 2811) to Chapter 2 of Division 3 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 2076, as amended, Fuentes. Employment: hiring practices: electronic employment verification.

The E-Verify Program of the United States Department of Homeland Security, in partnership with the United States Social Security Administration, enables participating employers to use the program, on a voluntary basis, to verify that the employees they hire are authorized to work in the United States.

Various provisions of existing state and federal law prohibit discrimination in employment on different bases, including, but not limited to, the race, color, sex, religion, or marital status of a person.

This bill would prohibit the State of California from participating in any electronic employment verification system, as defined, unless required by federal law. The bill would also prohibit *the state, or* a city, county, city and county, or special district from requiring any employer to use an electronic employment verification system.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:
3 (a) California relies on both its diverse workforce and its
4 employers to fuel the world's eighth largest economy. Currently,
5 a system of state and federal laws outline the procedures employers
6 must use to comply with immigration and labor laws, and most
7 employers practice due diligence in complying with these laws.
8 However, the federal government is premature in encouraging the
9 use of a voluntary electronic employment verification program
10 that is still plagued with deficiencies. The purpose of this program,
11 commonly known as E-Verify (enacted by Section 404 of Public
12 Law 104-208), is to allow employers to electronically verify
13 workers' employment eligibility by accessing information in
14 databases maintained by the Department of Homeland Security
15 (DHS) and the Social Security Administration (SSA).
16 (b) E-Verify is often portrayed as a solution to curbing the hiring
17 of unauthorized workers, but the program has been plagued by
18 numerous problems since its inception in 1997. Reports and
19 evaluations commissioned by the former Immigration and
20 Naturalization Service in 2002, by the DHS and the Government
21 Accountability Office (GAO) in 2007, by the Congressional Budget
22 Office, and the SSA's Office of the Inspector General have found
23 that E-Verify has significant weaknesses, including:
24 (1) Reliance on outdated government databases that have
25 unacceptably high error rates. Within the SSA database there are
26 17.8 million discrepancies related to name, date of birth, or
27 citizenship status, with 71 percent of those discrepant records
28 pertaining to United States citizens.
29 (2) Employer misuse of the program to take adverse action
30 against workers. For instance, as often as 22 percent of the time,
31 some employers restrict work assignments of workers tentatively
32 identified as unconfirmed but who still have the right to contest
33 the finding.

1 (3) Undue cost and fiscal burden to employers and localities.
2 E-Verify could cost private employers \$136 million and local
3 governments \$68 million per year.

4 (c) Employers enter into a memorandum of understanding
5 (MOU) with the federal government upon registering for E-Verify,
6 yet there is no enforcement mechanism or penalty associated with
7 failure to comply with the rules and procedures outlined in the
8 MOU.

9 (d) In a hearing before the United States House of
10 Representatives Subcommittee on Ways and Means, expert
11 testimony affirmed that the high error rate of E-Verify affects all
12 workers, but has a disproportionate impact on lawful foreign-born
13 workers who are 30 times more likely than native-born workers
14 to be incorrectly identified as not authorized for employment.
15 Similarly, the 2007 evaluation commissioned by the DHS and the
16 GAO found that foreign-born United States citizens experience
17 the most adverse effects, with almost 10 percent initially being
18 told that they are not authorized to work (versus 0.1 percent for
19 native-born United States citizens).

20 (e) As of February 2008, less than 1 percent of employers
21 nationwide and a mere 0.3 percent of employers in California are
22 enrolled in the voluntary system. Attempts at the federal level to
23 increase the use of a program that has not passed the basic litmus
24 test of accuracy will make it even more difficult for law-abiding
25 employers to comply with labor and discrimination laws and will
26 expose many authorized workers and United States citizens to
27 unfair and discriminatory practices in the workplace.

28 (f) *Despite the documented flaws with the voluntary system, the*
29 *state of Arizona has enacted a statutory requirement that employers*
30 *use the system or be subject to harsh enforcement, including the*
31 *loss of business licenses and imprisonment. This has created a*
32 *dilemma for employers which has led to workforce confusion and*
33 *instability and harm to Arizona's economy.*

34 (f)

35 (g) Therefore, it is the intent of the Legislature that the State of
36 California ~~not participate in~~ and cities, counties, cities and counties,
37 and special districts not mandate, or otherwise compel,
38 participation in or reliance upon the voluntary but flawed system
39 and send a strong signal to other states and employers that E-Verify

1 shall not be used or mandated while deficiencies within the system
2 persist.

3 SEC. 2. Article 2.5 (commencing with Section 2811) is added
4 to Chapter 2 of Division 3 of the Labor Code, to read:

5
6 Article 2.5. Electronic Employment Verification Systems
7

8 2811. (a) The State of California, as an employer, shall not
9 participate in any electronic employment verification system,
10 unless otherwise required by federal law.

11 (b) While recognizing that participation in the federal electronic
12 employment verification system, E-Verify, is voluntary, the State
13 of California discourages employers from participating in any
14 electronic employment verification system, unless required by
15 federal law, due to concerns with federal database error rates and
16 the discriminatory impact of the system.

17 (c) ~~No~~ Neither the state nor any city, county, city and county,
18 or special district shall require any employer to use an electronic
19 employment verification system, including, but not limited to, the
20 following circumstances:

21 (1) As a condition of receiving a government contract.

22 (2) As a condition of applying for or maintaining a business
23 license.

24 (3) As a penalty for violating licensing or other similar laws.

25 2812. For purposes of this article, “electronic employment
26 verification system” means any employment verification system
27 that allows employers to electronically verify workers’ employment
28 authorization with the federal government. This includes the Basic
29 Pilot Program, enacted by Section 404 of Public Law 104-208,
30 renamed in 2007 as the E-Verify Program, and other pilot programs
31 for electronic employment eligibility confirmation. The term
32 “electronic employment verification system” does not include the
33 I-9 Employment Eligibility Verification form or any other
34 employment eligibility systems that are required by federal law.